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8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2013-861

12 **DIANA LYNN EVANS, AKA DIANA**  
13 **LYNN NIKAS**  
14 **67 North Valley View Road**  
**Swall Meadows, CA 93514**

**A C C U S A T I O N**

15 **Registered Nurse License No. 218618**  
16 **Nurse Practitioner Certificate No. 9822**  
17 **Nurse Practitioner Furnishing**  
**Certificate No. 9822**  
18 **Clinical Nurse Specialist Certificate No. 546**

19 Respondent.

20 Complainant alleges:

21 **PARTIES**

22 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
23 official capacity as the Executive Officer of the Board of Registered Nursing (the Board),  
24 Department of Consumer Affairs.

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1           8.     Section 2750 of the Code states:

2     Every certificate holder or licensee, including licensees holding temporary licenses,  
3     or licensees holding licenses placed in an inactive status, may be disciplined as  
4     provided in this article [Article 3 of the Nursing Practice Act (Bus. & Prof Code, §  
5     2700 et seq.)]. As used in this article, "license" includes certificate, registration, or  
6     any other authorization to engage in practice regulated by this chapter. The  
7     proceedings under this article shall be conducted in accordance with Chapter 5  
8     (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the  
9     Government Code [the Administrative Procedure Act], and the board shall have all  
10    the powers granted therein.

11           9.     Section 2761 of the Code states:

12     The board may take disciplinary action against a certified or licensed nurse or deny an  
13     application for a certificate or license for any of the following:

14     (a) Unprofessional conduct, which includes, but is not limited to, the following:

15         (1) Incompetence, or gross negligence in carrying out usual certified or licensed  
16         nursing functions.

17         ...

18           10.    Section 2725 of the Code states:

19     (a) In amending this section at the 1973-74 session, the Legislature recognizes that  
20     nursing is a dynamic field, the practice of which is continually evolving to include  
21     more sophisticated patient care activities. It is the intent of the Legislature in  
22     amending this section at the 1973-74 session to provide clear legal authority for  
23     functions and procedures that have common acceptance and usage. It is the  
24     legislative intent also to recognize the existence of overlapping functions between  
25     physicians and registered nurses and to permit additional sharing of functions within  
26     organized health care systems that provide for collaboration between physicians and  
27     registered nurses. These organized health care systems include, but are not limited  
28     to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250)  
   of Division 2 of the Health and Safety Code, clinics, home health agencies,  
   physicians' offices, and public or community health services.

   (b) The practice of nursing within the meaning of this chapter [the Nursing Practice  
   Act] means those functions, including basic health care, that help people cope with  
   difficulties in daily living that are associated with their actual or potential health or  
   illness problems or the treatment thereof, and that require a substantial amount of  
   scientific knowledge or technical skill, including all of the following:

   (1) Direct and indirect patient care services that ensure the safety, comfort, personal  
   hygiene, and protection of patients; and the performance of disease prevention and  
   restorative measures.

   (2) Direct and indirect patient care services, including, but not limited to, the  
   administration of medications and therapeutic agents, necessary to implement a  
   treatment, disease prevention, or rehabilitative regimen ordered by and within the  
   scope of licensure of a physician, dentist, podiatrist, or clinical psychologist, as  
   defined by Section 1316.5 of the Health and Safety Code.

(3) The performance of skin tests, immunization techniques, and the withdrawal of human blood from veins and arteries.

(4) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (A) determination of whether the signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics, and (B) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures.

(c) 'Standardized procedures,' as used in this section, means either of the following:

(1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through collaboration among administrators and health professionals including physicians and nurses.

(2) Policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, by an organized health care system which is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

The policies and protocols shall be subject to any guidelines for standardized procedures that the Division of Licensing of the Medical Board of California and the Board of Registered Nursing may jointly promulgate. If promulgated, the guidelines shall be administered by the Board of Registered Nursing.

(d) Nothing in this section shall be construed to require approval of standardized procedures by the Division of Licensing of the Medical Board of California, or by the Board of Registered Nursing.

(e) No state agency other than the board may define or interpret the practice of nursing for those licensed pursuant to the provisions of the chapter, or develop standardized procedures or protocols pursuant to this chapter, unless so authorized by this chapter, or specifically required under state or federal statute. "State agency" includes every state office, officer, department, division, bureau, board, authority, and commission.

11. California Code of Regulations, title 16, section 1442, states:

As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

12. California Code of Regulations, title 16, section 1443, states:

As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

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13. California Code of Regulations, title 16, section 1443.5 states:

A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

14. California Code of Regulations, title 16, section 1471 states:

For purposes of this article:

(a) 'Standardized procedure functions' means those functions specified in Business and Professions Code Section 2725(c) and (d) which are to be performed according to 'standardized procedures;'

(b) 'Organized health care system' means a health facility which is not licensed pursuant to Chapter 2 (commencing with Section 1250), Division 2 of the Health and Safety Code and includes, but is not limited to, clinics, home health agencies, physicians' offices and public or community health services;

(c) 'Standardized procedures' means policies and protocols formulated by organized health care systems for the performance of standardized procedure functions."

15. California Code of Regulations, title 16, section 1472 states:

An organized health care system must develop standardized procedures before permitting registered nurses to perform standardized procedure functions. A registered nurse may perform standardized procedure functions only under the conditions specified in a health care system's standardized procedures; and must provide the system with satisfactory evidence that the nurse meets its experience,

training, and/or education requirements to perform such functions.

16. California Code of Regulations, title 16, section 1474 states:

Following are the standardized procedure guidelines jointly promulgated by the Medical Board of California and by the Board of Registered Nursing:

(a) Standardized procedures shall include a written description of the method used in developing and approving them and any revision thereof.

(b) Each standardized procedure shall:

(1) Be in writing, dated and signed by the organized health care system personnel authorized to approve it.

(2) Specify which standardized procedure functions registered nurses may perform and under what circumstances.

(3) State any specific requirements which are to be followed by registered nurses in performing particular standardized procedure functions.

(4) Specify any experience, training, and/or education requirements for performance of standardized procedure functions.

(5) Establish a method for initial and continuing evaluation of the competence of those registered nurses authorized to perform standardized procedure functions.

(6) Provide for a method of maintaining a written record of those persons authorized to perform standardized procedure functions.

(7) Specify the scope of supervision required for performance of standardized procedure functions, for example, immediate supervision by a physician.

(8) Set forth any specialized circumstances under which the registered nurse is to immediately communicate with a patient's physician concerning the patient's condition.

(9) State the limitations on settings, if any, in which standardized procedure functions may be performed.

(10) Specify patient record keeping requirements.

(11) Provide for a method of periodic review of the standardized procedures.

### **COSTS**

17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
2 included in a stipulated settlement.

### 3 **FIRST CAUSE FOR DISCIPLINE**

#### 4 **(Gross Negligence)**

5 18. Respondent is subject to disciplinary action under section 2761, subsection (a),  
6 subparagraph (1), of the Code as defined in the California Code of Regulations, title 16, section  
7 1442, in that she engaged in conduct that constituted an extreme departure from the standard of  
8 care which, under similar circumstances, would have ordinarily been exercised by a competent  
9 registered nurse. The circumstances are as follows:

10 (a) On or about April 30, 2008, Respondent was employed as an Acute Care Nurse  
11 Practitioner at Harbor-UCLA Medical Center in the Department of Surgery, Division of  
12 Neurosurgery. Respondent had been working at the Neurosurgery outpatient clinic for  
13 approximately one and a half years.

14 (b) On April 30, 2008, Respondent performed a consultation for surgical evaluation on  
15 patient RB, a thirty-one year old male who had suffered an industrial accident and complained of  
16 pain radiating down the back of leg to the heel.

17 (c) The consultation performed by Respondent on the date above did not include an  
18 assessment of or reference to the Patient RB's documented complaints. During the consult  
19 patient RB advised Respondent that his left leg gives out and that he falls frequently. Further,  
20 patient RB had to use his crutch in order to stand when asked by Respondent to move to the exam  
21 table. Respondent failed to document past medical history and past medical interventions or x-  
22 rays to assist in a differential diagnosis. Respondent failed to document or perform a thorough  
23 physical of patient RB and failed to note additional physical complaints. Respondent also failed  
24 to document that she discussed Patient RB's past medical history or current medical status with  
25 her supervising physician or the physician on call. Respondent failed to promptly consult with a  
26 physician when administering a new admission or consultation and/or when the patient failed to  
27 respond to his plan of care within a reasonable time frame. Respondent failed to follow  
28 standardized procedures in place, including, but not limited to, the Harbor-UCLA Medical

Center, Standardized Procedures, Policies and Protocols for Neurosurgical Nurse Practitioners, Department of Surgery, Division of Neurosurgery and those in her hired scope of practice as a Neurosurgery Acute Care Nurse Practitioner.

(d) On this same date, although Respondent notes in the patient's record that there were "no surgical lesions on outside MRI (magnetic resonance imager)," Respondent failed to document the MRI results, and that she examined the MRI herself and/or with her supervising physician. Respondent also failed to review the MRI with the patient and explain the surgical and non-surgical options. Also, Respondent failed to identify the MRI, including by indicating the date of the MRI. There is no documented education of the MRI impression or treatment options. The Respondent's plan for the patient was to include outpatient physical therapy, pain management and discharge from clinic. Any clinical decision based on Respondent's interpretation of radiography should have taken place only after communicating with the supervising physician and, following Respondent's documentation of same in patient RB's record. Respondent should have reviewed the patient with the supervising physician or physician on call. In regards to patient RB's MRI results, Respondent failed to follow standardized procedures in place including, but not limited to, the Harbor-UCLA Medical Center, Standardized Procedures, Policies and Protocols for Neurosurgical Nurse Practitioners, Department of Surgery, Division of Neurosurgery and those in her hired scope of practice as a Neurosurgery Acute Care Nurse Practitioner.

## **SECOND CAUSE FOR DISCIPLINE**

### **(Incompetence)**

19. Respondent is subject to disciplinary action under section 2761, subsection (a), subparagraph (1), of the Code, as defined in California Code of Regulations, title 16, section 1443 and 1443.5 in that she was incompetent and did not possess and/or failed to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse. Complainant refers to, and by this reference incorporates the allegations set forth above in paragraph 18, subsections (a) through (d), inclusive, as though set forth fully.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 20. Respondent is subject to disciplinary action under section 2761, subsection (a), in that  
4 she engaged in unprofessional conduct. Complainant refers to, and by this reference incorporates  
5 the allegations set forth above in paragraph 18, subsections (a) through (d), inclusive, as though  
6 set forth fully.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
9 and that following the hearing, the Board of Registered Nursing issue a decision:

10 1. Revoking or suspending Registered Nurse License Number 218618, issued to Diana  
11 Lynn Evans, aka Diana Lynn Nikas;

12 2. Revoking or suspending Registered Nurse Practitioner Certificate Number 9822,  
13 issued to Diana Lynn Evans, aka Diana Lynn Nikas;

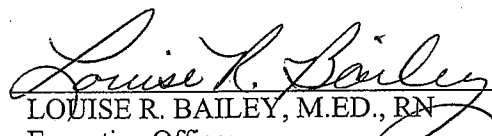
14 3. Revoking or suspending Registered Nurse Practitioner Furnishing Certificate Number  
15 9822, issued to Diana Lynn Evans, aka Diana Lynn Nikas;

16 4. Revoking or suspending Clinical Nurse Specialist Certificate Number 546, issued to  
17 Diana Lynn Evans, aka Diana Lynn Nikas;

18 5. Ordering Diana Lynn Evans to pay the Board of Registered Nursing the reasonable  
19 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
20 Code section 125.3;

21 6. Taking such other and further action as deemed necessary and proper.

22 DATED: April 8, 2013

23   
24 LOUISE R. BAILEY, M.ED., RN  
25 Executive Officer  
26 Board of Registered Nursing  
27 Department of Consumer Affairs  
28 State of California  
Complainant

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